

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Elizabeth Burciaga,
Petitioner-Appellant,

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 10-77-0027
Parcel No. 060/07702-100-000

On April 18, 2011, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant, Elizabeth Burciaga, was self-represented. The Polk County Board of Review designated Assistant County Attorney David Hibbard as its legal representative. A digital recording of the proceedings was made. The Appeal Board now having reviewed the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Elizabeth Burciaga, owner of property located at 1318 East 25th Court, Des Moines, Iowa, appeals from the Polk County Board of Review decision reassessing her property. The real estate was classified residential for the January 1, 2010, assessment and valued at \$106,400; representing \$17,200 in land value and \$89,200 in building value. Burciaga protested to the Board of Review on the ground that the property was assessed for more than authorized by law under Iowa Code section 441.37(1)(b). In response to the protest, the Board of Review notified Burciaga the January 1, 2010, assessment would not change, stating, "The property was not changed because there has been no change downward in value since the last reassessment."

Burciaga then appealed to this Board on the same ground and added an additional ground of error. However, Burciaga's error issue is really the same as her claim that the property is over assessed. Burciaga values the property at \$83,500 and seeks \$22,900 in relief.

We note Burciaga's assessment did not change between 2009 and 2010, making this an "interim" year. The only ground available in this year is that there has been a change in value since the last reassessment. Although Burciaga did not make this statement on her petition or appeal forms, the Board of review denied her petition on this ground. We find the Board of Review, therefore, may have acquiesced to the ground. *See Security Mut. Ins. Ass'n v. Bd. of Review of City of Ft. Dodge*, 467 N.W.2d 301, 305 (Iowa Ct. App. 1991); *White v. Bd. of Review of Polk County*, 244 N.W.2d 765, 769 (Iowa 1976). Additionally, we note the Board of Review did not object to the market value claim; nevertheless, as we will discuss, Burciaga's evidence fails to prove either claim.

The subject property consists of a one-story frame dwelling having 1044 square feet of total living area and a 211 square-foot basement. The dwelling was built in 1970 and has a 4+00 quality grade. It is in very good condition. The site consists of 0.186 acres and has a 576 square-foot detached garage built in 1991.

Burciaga testified that the prior assessment considered the subject to be in good condition and now the property is considered in very good condition. Burciaga purchased the property in February, 2010, for \$83,000.

Burciaga submitted an appraisal by Steve Cash of Rels Valuation, Des Moines, Iowa. Cash valued the subject property from the market approach at \$83,500. Cash did not do a cost approach or income approach to value. The appraisal was performed for Wells Fargo Bank and is dated as of February 2010.

The appraisal did not adjust the comparable sales for the number of bedrooms, location, or age. We question the accuracy of this appraisal noting in one instance the appraiser comments the sale

appears to be an arms-length transaction, and then later comments the previous transfer was by sheriff's deed in foreclosure. That sale occurred in mid-November 2009 for \$104,426. Therefore, we give no weight to the appraisal.

The Polk County Board of Review did not supply any additional evidence other than the certified record. The information in the record indicates the sales/purchase was from a lending institution. This would potentially impact the sales price of the subject property making it abnormal and not arms-length. Iowa Code § 441.21(1)(b). The appraiser analysis also makes additional comments regarding the Cash appraisal. It notes comparable one is 200 square-feet smaller and is 28 years older than the subject property; comparable two was not adjusted for age; and comparable three is 200 square-feet smaller.

Reviewing all the evidence, we find the preponderance of the evidence does not support Burciaga's contention that there has been a downward change in value or, if it would have been an appropriate ground for consideration, that the property is assessed for more than authorized by law.

Conclusions of Law

The Appeal Board based its decision on the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determined anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment*

Appeal Bd. 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sales prices of the property or comparable properties in normal transactions are also to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

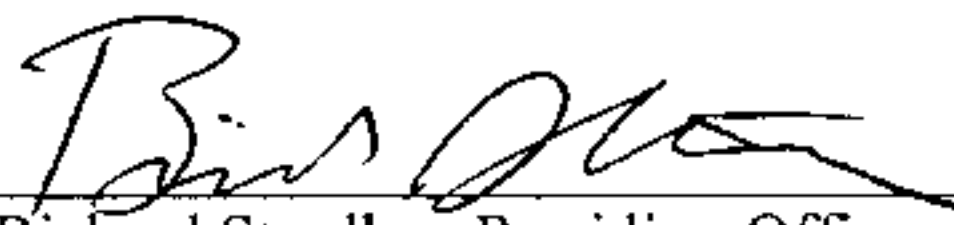

In a non-reassessment or "interim" year, when the value of the property has not changed, a taxpayer may challenge its assessment on the basis that there has been a downward trend in value. *Eagle Food Ctrs., Inc. v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 862 (Iowa 1993). The last unnumbered paragraph of Iowa Code section 441.37(1) and its reference to section 441.35(3) give rise to the claim of downward trend in value. For a taxpayer to be successful in its claim of change in value, the taxpayer must show a change in value from one year to the next; the beginning and final valuation. *Equitable Life Ins. Co. of Iowa v. Bd. of Review of the City of Des Moines*, 252 N.W.2d 449, 450 (Iowa 1997). The assessed value cannot be used for this purpose. *Id.* Essentially, it is not enough for a taxpayer to prove the last regular assessment was wrong; such a showing would be sufficient only in a year of regular assessment. *Id.* at 451.

Burciaga failed to prove by a preponderance of evidence that the subject property has had a change in value. We think it is clear from the wording of section 441.21(1)(b) that a sales price for the subject property in a normal transaction just as a sales price of comparable property is a matter to be considered in arriving at market value but does not conclusively establish that value. *See Riley v. Iowa City Board of Review*, 549 N.W.2d 289, 290 (Iowa 1996). However, a sales price in an abnormal transaction is not to be taken into account unless the distorting factors can be clearly accounted for.

§ 441.21. Although the sales price is significantly less than the assessment and one might argue suggests a downward change in value, there is no evidence that the distorting factors were clearly accounted for. Therefore, we affirm the Burciaga property assessment as determined by the Board of Review. The Appeal Board determines that the property assessment value as of January 1, 2010, is \$106,400.

THE APPEAL BOARD ORDERS that the January 1, 2010, assessment as determined by the Polk County Board of Review is affirmed.

Dated this 14 day of June 2011.


Richard Stradley, Presiding Officer

Karen Oberman, Board Member

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>6-14</u> , 2011.	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier <input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	